

From: Benjamin B. Thomas
To: Microsoft ATR
Date: 1/28/02 6:08pm
Subject: Microsoft Settlement

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United States Department of Justice:

I am writing to oppose the proposed settlement with Microsoft. I have read the original complaint of United States and the several States, the proposed settlement, the Competitive Impact Statement at, in addition to many other sources including the findings of fact. I feel that the proposed settlement falls far short of rectifying the damage which has been done to myself and other consumer by Microsoft through years of abuse of their monopoly, and that the enforcement provisions do little to dissuade Microsoft from continuing such practices in the future.

While some of the settlement provisions are a good start, there are many loop holes, and several places where it falls short. The trial should be allowed to proceed, so that a stronger remedy without loop holes, and with stricter enforcement and actual punishment for past wrongs can be enacted. I will leave some of the other problem topics to others, but wish to address a limited set here.

The stipulated parties who are protected from anti-competitive acts are ISVs, IHVs, IAPs, ICPs, and OEMs. This list is much too exclusive. The general public and especially Open Source software developers must also be protected. In the recent past, one of the only viable responses to Microsoft's hegemony has been Open Source software developers. These people have *donated* millions of hours of their time to produce a software platform -- a feat which would not have been possible if they were a strictly commercial entity in competition with Microsoft. These people must have the same access to information as commercial entities, or one of the few viable responses to the Microsoft monopoly will be stymied by the settlement.

All of the API, format, and protocol standards which Microsoft uses

to propagate its monopoly should be opened. Microsoft has repeatedly leveraged its monopoly position along with rapidly changing or secret formats to lock competitors out of their market. Due to the substantial network effects involved in computer software, it is very hard to function when using alternative software since users will be unable to interact with others as soon as Microsoft releases the next revision of a product.

The central reason that Microsoft has maintained and extended its monopoly is not due to the superiority of its product, but through "lock-in." Once one's data and software are secreted away within the Microsoft platform, it is extremely painful to switch to a superior platform. This not only directly hurts consumers, but stifles innovation in the computer industry. The provisions in the settlement do not do enough to make Microsoft open these standards to all parties interested in being compatible and do little to dissuade foot-dragging on Microsoft's part. Microsoft's APIs, file formats, and protocols should be fully standardized, documented, publicly published, and an accessible compatibility laboratory formed. This allow other software vendors to compete on a more fair playing field. This would be a start, but as others will surely describe in other comments, a fair distribution channel, free from punishing bundling agreements must be enforced.

I ask the DOJ to reconsider the decision to settle and to continue with the matter at trial. Microsoft has repeatedly show a willingness to flout the law. The remedies do not go far enough in punishing past illegal behavior or dissuading similar new behavior. The proposed mechanism of enforcement does not seem to have teeth, and Microsoft will likely attempt to break it soon after enactment. There is little deterrent to their doing so.

Sincerely,
Benjamin Thomas, Voter